

Benjamin Harrison Day
Indiana Supreme Court courtroom



Ex Parte Milligan Comes to Life

(a scripted trial based on the Indiana Civil War case of *Ex Parte Milligan*)

(Have large cue cards set up on the easel with pictures/words of where each scene is taking place or have an audience member hold up cards)

Part One: Military Tribunal

Student holds up “Applause” sign

Scene card person holds up card: “1864” and “Indianapolis, Indiana”

Milligan gives brief background about his case—very conversational

- I’m a lawyer and a farmer and I live in Huntington near Ft. Wayne, Indiana.
- I thought the Civil War was outrageous, so, while it was going on, I joined some protest groups to convince people that the war was unfair.
- I even went to Fort Wayne to join in a protest against the draft ordered by President Lincoln. *Do you know what a **DRAFT** is?*

Audience person: (reads definition of **DRAFT** from card) Draft—To make or force someone to go into the military.

Milligan:

- I told a crowd that we should be able to refuse to enter the army because we live in a free country. I told them to resist if they wanted to. A group of soldiers showed up. Do you know what they did to me?
- They put me on a train to Indianapolis to be put on trial in front of a military tribunal made up of 12 soldiers. *Do you know what a **MILITARY TRIBUNAL** is?*

Audience person: (reads definition of **MILITARY TRIBUNAL** from card) Military Tribunal—a court where military officers serve as judge and jury. Sometimes they are held in secret.

Enactment of the Military Tribunal

(6 audience members—the military tribunal—stand behind the lower bench. Props: soldier style hats. Place cards with lines from the script on the lower bench. Select one juror to portray Major-General Alvin P. Hovey.)

***Hovey:** I am Alvin P. Hovey. Do you know who I am?

Audience person: (stands up and reads **HOVEY’S** bio card) Alvin Peterson Hovey was a judge on the Supreme Court. He was one of Indiana’s representatives to the US Congress in Washington, DC and Governor of Indiana.

* = there are three different students associations with Alvin P. Hovey

Hovey: I am a Major-General in the Union Army, and I will act as the foreman of this jury. Do you know who **UNION SOLDIERS** are?

Audience person: (reads definition of **UNION SOLDIER** from card) Union Soldiers—Soldiers who fought for the Northern States (President Lincoln) during the Civil War.

Hovey: These other soldiers and I will hear the charges against Mr. Milligan, listen to his defense, and decide what should happen to him if we find him guilty.

(Each of the other 5 soldiers/jurors takes a turn asking Milligan a question.)

Soldier 1: You are charged with treason.

Milligan: *What do you mean, **TREASON**?*

Audience person: (reads definition of **TREASON** from card) Treason—Betraying or trying to cause harm to the government of the United States. This crime is punishable by death.

Soldier 2: How do you plead, guilty or not guilty?

Milligan: NOT guilty! I live in a free country!

Soldier 3: Your country is free because the Union Army fights for it!

Milligan: The Union Army fights for me so I can be free to speak my mind in public. This war is wrong.

Soldier 4: So you are against your President and against your Government?

Milligan: No, I am opposed to this war and think I should be allowed to say so.

Soldier 5: What did you tell people to do at that Fort Wayne meeting?

Milligan: I told them that I thought they shouldn't have to join the army if they didn't want to! And, that they could resist being made to join the army with force if necessary.

Hovey: (turns to fellow soldiers/jurors) What do you think, soldiers?

Soldier 1: Guilty.

Soldier 2: Guilty.

Soldier 3: Guilty.

Soldier 4: Guilty.

Soldier 5: Guilty.

Hovey: Mr. Milligan, we find you guilty of treason. The punishment for treason is death.
(students return to their seats.)

Milligan: (as he is walking off stage). This is ridiculous. I'm going to appeal to the US Supreme Court.

Student holds up APPLAUSE sign

(As Milligan walks off stage, Abraham Lincoln stands up, walks around the corner, etc. Props: two Abraham Lincoln hats.)

Audience person: (reads biography of **PRESIDENT LINCOLN** from card) President Lincoln—Abraham Lincoln was elected the 16th President of the United States in 1860, and re-elected in 1864. He led the Union during the Civil War. He signed the Emancipation Proclamation—which freed the slaves, and wrote the Gettysburg Address. He was assassinated by John Wilkes Booth 5 days after the Civil War ended.

Lincoln: I think I'm going to put Mr. Milligan's execution on hold until after we see what the U.S. Supreme Court has to say about this.

Part Two: Question and Answer Session

Moderator engages audience in a question and answer session

Suggested topics:

1. When was the Civil War?
2. Who were the 2 sides in the War?
3. Do you think Milligan should have been tried for opposing the war, even with violent resistance?
4. Do you think it is okay for the military to try someone who isn't in the army?
5. Do you think this could happen today?
6. Is the US currently at war?
7. What happens to people who protest against the war in Iraq and Afghanistan?
8. What happens to Americans who fight for the other side?

When questions seem to be fading, or when Moderator thinks enough time has been spent on this section, Milligan re-enters the room.

Student holds up "Applause" sign

Part Three: U.S. Supreme Court Case

Scene card person holds up card: "1866," US Supreme Court picture, "Washington DC"

Milligan: Well, I thought the treatment I received from the military court was completely unfair, so I appealed to the U.S. Supreme Court. *Do you know what the U.S. Supreme Court is? *

Audience person: (reads definition of US Supreme Court from Card) U.S. Supreme Court—The highest legal court in the land.

Milligan: *Do you know what an APPEAL is?*

Audience person: (reads definition of **APPEAL** from card) Appeal—To have a higher court review the ruling of a lower court. You only do this if you are not happy with the ruling of the lower court.

(The 4 students portraying the US Supreme Court Justices emerge on to the upper bench in robes. Bailiff is standing at lower bench with gavel.)

Bailiff: (*pound the gavel*) All rise. The Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Supreme Court of the United States are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court! (*judges sit down*). You may be seated.

Justice 1: We have before us the case of *Ex parte Milligan*. Mr. Milligan has been convicted of treason, and today appeals his conviction. Mr. Milligan you may begin.

Milligan: Thank you Mr. Chief Justice. Your Honors, a jury of 12 Soldiers tried me during wartime. I had no choice of a lawyer to defend me, and no witnesses were called. It seems so unfair, and I have been worrying myself sick. I am completely weakened from all the time I've been unlawfully forced to spend in a jail cell. I was sentenced to death, and although President Lincoln has delayed the imposition of my sentence, the date of my execution keeps getting closer.

Justice 2: Mr. Milligan, let's just get to the point. When all this started, where were you holding your anti-war rally?

Milligan: In Fort Wayne, Indiana, your honor.

Justice 3: Was there fighting going on in this area?

Milligan: No sir, this was not a war zone, but a civilian area. It is about 100 miles north of Indianapolis. The only military activity in Indiana during the war was about 200 miles south, around the border of Indiana and Kentucky.

Justice 4: Were the regular courts open and conducting business during this time?

Milligan: Yes they were, your Honor.

Justice 1: Thank you, Mr. Milligan. We will let you know our decision shortly.

(Justices pretend to confer—huddle and whisper)

Justice 2: Mr. Milligan, we're overturning the ruling of the military court, and here are our reasons why:

1. The civilian courts were working
2. This was not a war zone,
3. Therefore, a military court has no jurisdiction

Justice 3: You are a free man, Mr. Milligan.

Bailiff: All rise. (*Bailiff pounds gavel*) This court is adjourned. You may be seated.

(Judges Rise and leave the bench.)

Student holds up "Applause" sign

Part IV: Civil Trial Back in Indianapolis

Scene card person holds up cards: "1871," "Indianapolis, Indiana," State House picture

Milligan: Ha! Finally these people are being reasonable! But I've been angry, sad and scared for so long...My health is terrible. I am a sickly man, because of those evil Union soldiers! I'm going to sue everyone involved in that original trial. And I'm going to hire the best lawyer in town: *Thomas Hendricks, have you ever heard of him?*

Audience person: (describes **HENDRICKS** career from card) Thomas Hendricks—In 1871, Thomas Hendricks was considered to be one of the best lawyers in Indianapolis. He was Milligan's attorney in the final trial held in Indianapolis. In 1872, he became governor of Indiana and in 1884, Vice-President of the United States.

Milligan : Governor Morton, General Hovey, and General Ben Spooner better just watch out. With a lawyer like Thomas Hendricks, who could possibly defeat me?

(Oliver Morton, Alvin Hovey and General Ben Spooner gather in the front of the room.)

Morton: This is ridiculous. (turns to audience) Do you know who I am?

Audience person: (stands up and reads **MORTON'S** bio card) Oliver Perry Morton was governor of Indiana during Milligan's Military Trial. He was the first Indiana-born man to hold the office of governor.

Morton: I was the Governor of Indiana during the war, how can he sue me? Who should we hire to defend us?

Spooner: Well Hovey and I were both Generals and he's suing us. He has no respect. I even lost my arm in the war he protested against.

Audience Person: (Reads definition of General Ben Spooner). General Ben Spooner was a Union Officer who lost an Arm at the Battle of Kennesaw Mountain. He was one of the defendants Milligan sued for damages in his final trial.

Hovey: Anyway, we'd better get a good lawyer. I heard Milligan hired Thomas Hendricks!

(Audience member rings a bell to represent a phone or doorbell.)

(Audience member stands up and reads a telegram from President Grant)

Audience person: Urgent telegram from President Grant to Governor Morton and Generals Spooner and Hovey. The President suggests you hire Benjamin Harrison to defend you in the Milligan case.

Morton: Well what do you think? Should we ask Benjamin Harrison if he'll do it? Do you know who **Benjamin Harrison** is?

Audience person: (reads **HARRISON** career info from card) Benjamin Harrison lived in Indianapolis and was considered a brilliant lawyer. When Morton, Spooner, and Hovey were sued by Milligan, President Grant suggested they hire Benjamin Harrison to represent them. In 1889, Harrison became president of the United States.

(6 audience members file up to stand behind the lower bench as jurors. Props: bowler style hats, bow ties, and money for jury award.)

Hendricks: Let the trial begin!.....Ladies and gentlemen of the jury, don't let yourselves be fooled; the law has already been passed. The men who are on trial here today put an innocent civilian in front of a military tribunal in an area outside a war zone. There can be no trials of civilians by soldiers outside of war zones. You (the jury) are here to uphold the law, and the U.S. Supreme Court says that the war-time trial of Mr. Milligan was unlawful. General Hovey and his men made a serious error in judgment. They grabbed an innocent man, threatened him, and took him away from his family. Imagine that a mob of soldiers came to your door and took you away to be condemned to death. Imagine that they did this because you had spoken out against the war. Is this not free country? What choice do you have but to award Mr. Milligan something for his pain and suffering...not only HIS pain and suffering, but his FAMILY'S suffering as well? Thank you. (sits down)

Harrison: My fellow patriots, what we have here is a scoundrel (point to Milligan) trying to cover himself with a shield of law. I am not standing here telling you to throw the law away. What my clients did was wrong under the law. However, what we are missing in this story is the big picture. First, you should know that Mr. Milligan was high-up in the chain of command in the Sons of Liberty. While your brothers and fathers were fighting

for the Union, bleeding and dying for the cause, Mr. Milligan was plotting for a Southern victory. He was going to supply Southern prisoners of war with guns. Right here in Indianapolis, Mr. Milligan and his friends were going to release the enemy into our city. On the other hand, the accused men, Morton, Hovey and Spooner, were sworn protectors of our fair city. Mr. Spooner, for example, lost his arm for his country, and almost lost his life. Once again, I agree that the accused men made a mistake. But the freedom that these men fought for is sacred. Don't let it be ruined by protecting the interest of a traitor such as Mr. Milligan. Thank you. (sits down)

(Jurors pretend to confer—huddle together)

Juror 1: We find in favor of Mr. Milligan

Juror 2: We award him \$5 in damages (Hold up a prop—oversized money—if we have it.)

Juror 3: The \$5 shows that while we think he shouldn't have been put on trial by a military court, we certainly don't approve of his actions and don't think that the actions of the military court hurt him in any way.

The End

Student holds up "Applause" sign